

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

MAXINE FAYE BOOMGARDEN, Complainant, and IOWA CIVIL RIGHTS COMMISSION,

v.

HARDIN COUNTY VETERANS' COMMISSION BOARD and HARDIN COUNTY BOARD OF SUPERVISORS, Respondents.

CP # 07-86-14926

FINDINGS OF FACT

1. The Commission's "Final Decision and Remand for Determination of Attorney's Fees" incorporated the following paragraphs of the Proposed Decision and Order:

G. Within 45 calendar days of the date of this order, provided that agreement can be reached between the parties on this issue, **the parties shall submit a written stipulation stating the amount of attorney's fees to be awarded Complainant.** If any of the parties cannot agree on a full stipulation to the fees, they shall so notify the Administrative Law Judge in writing and an evidentiary hearing on the record shall be held by the Administrative Law Judge for the purpose of determining the proper amount of fees to be awarded. If no written notice is received by the expiration of 45 calendar days from the date of this order, the Administrative Law Judge shall schedule a conference in order to determine the status of the attorneys fees issue and to determine whether an evidentiary hearing should be scheduled or other appropriate action taken. **Once the full stipulation is submitted** or the hearing is completed, **the Administrative Law Judge shall submit for the Commission's consideration a Supplemental Proposed Decision and Order setting forth a determination of attorney's fees.**

H. The Commission retains jurisdiction of this case in order to determine the actual amount of (a) attorneys fees (and to enter a subsequent order awarding these fees) . . . This order is final in all respects except for the determination and award of the attorney's fees. . . .

(Final Decision and Order of July 26, 1993)(emphasis added).

2. On November 16, 1993 a scheduling conference was held in order to set a hearing on attorney's fees as no settlement on fees had yet been reached. During the course of the conference, it became apparent that the only issue concerning fees claimed through August 5, 1993 was a legal issue.

3. Since the only issue extant concerning the fees through August 5, 1993 was legal and not factual, it was apparent that a hearing would not be necessary with respect to those fees. Counsel

for complainant was given until November 30th to update Complainant's application for attorney's fees to the period ending September 24, 1993. (Scheduling Conference Order).

4. The Complainant and Respondents were also given until December 15, 1993 to submit a stipulation setting forth all issues between them concerning fees. (Scheduling Conference Order).

5. The Complainant and Respondents were subsequently able to resolve all issues between themselves concerning attorney's fees and expenses. The Complainant and Respondents filed a written stipulation on December 22, 1993 whereby they agreed to "Stipulate to the entry of an order as to attorney fees and costs." (Stipulation as to Attorney Fees and Costs of Edward McConnell). This stipulation is part of the record of this case.

6. In this stipulation, the Complainant and Respondents agreed to an entry by the Commission of an order requiring Respondents to pay Complainant's attorney's fees and expenses in the following amounts:

TOTAL FEES	\$14,718.00
COSTS	\$991.26
TOTAL FEES AND COSTS	\$15,709.26

(Stipulation as to Attorney Fees and Costs of Edward McConnell)(emphasis in original).

7. The amounts stipulated to as reasonable attorney's fees and costs are stipulations of fact. For reasons stated in the conclusions of law, the amounts stipulated to are binding on the Commission, as they would be on any court or other adjudicative body. It may not modify or reject the amounts stipulated to in making its award of fees and costs. See Conclusion of Law Nos. 4, 5. In accordance with the joint stipulation, it is found that:

a. The complainant's attorney's fees, through September 24, 1993, in the amount of fourteen thousand seven hundred eighteen dollars (\$14,718.00), are reasonable and should be awarded.

b. The complainant's litigation expenses, through September 24, 1993, in the amount of nine hundred ninety dollars and twenty-six cents (\$991.26) are reasonable and should be awarded.

CONCLUSIONS OF LAW

1. The Iowa Civil Rights Act allows the award of damages which "shall include but are not limited to actual damages, court costs, and reasonable attorney fees" as part of the remedial action which the Commission may take in response to the Respondent's discriminatory practices. Iowa Code 216.15(8) (1993).

2.

[A] 'reasonable attorney's fee' cannot have been meant to compensate only work performed personally by members of the bar. Rather the term must refer to a

reasonable fee for the work product of an attorney. Thus the fee must take into account the work not only of attorneys, but also of secretaries, messengers, librarians, janitors, and others whose labor contributes to the work product for which an attorney bills her client; and it must also take into account other expenses and profit.

Missouri v. Jenkins, 491 U.S. ___, 105 L.Ed.2d 229, 241 (1989)(emphasis added).

3. An award of attorney's fees may be made in the absence of a separate evidentiary hearing where the opportunity for an attorney's fees hearing has been provided and all parties have elected to not take advantage of the opportunity. *See* Rouse v. Iowa Department of Transportation, 408 N.W.2d 767, 768 (Iowa 1987). **In this case, the Complainant and Respondent have elected to resolve the matter through stipulation rather than litigation.**

4. A "stipulation" is a "voluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate [the] need for proof." BLACK'S LAW DICTIONARY 1269 (5th ed. 1979). **Stipulations as to fact are binding on a court, commission or other adjudicative body** when, as in this case, there is an absence of proof that the stipulation was the result of fraud, wrongdoing, misrepresentation or was not in accord with the intent of the parties. *In Re Clark's Estate*, 131 N.W.2d 138, 142 (Iowa 1970); *Burnett v. Poage*, 239 Iowa 31, 38, 29 N.W.2d 431 (1948). *See* *Office of Consumer Advocate v. Utilities Board*, 452 N.W.2d 588, 594 (Iowa 1990).

5. **"Courts [commissions, and other adjudicative bodies] are bound to enforce valid stipulations, and they ordinarily have no power to alter, amend, contradict, delete, or go beyond the terms of a stipulation."** *Office of Consumer Advocate v. Utilities Board*, 452 N.W.2d 588, 594 (Iowa 1990)(citing *In Re Clark's Estate*, 131 N.W.2d 138, 142 (Iowa 1970)). The courts favor valid stipulations of fact because they "allow the parties to avoid the delays and uncertainties of litigation." *Id.* In determining the legal effect of a stipulation, any adjudicative body is required to "give effect to the intention of the parties." *Id.*

6. In accordance with the legal standards previously stated, and in light of the joint stipulation of fees, the Complainant should receive a fully compensatory reasonable attorney's fee award, including expenses, as set forth above.

DECISION AND ORDER

IT IS ORDERED, ADJUDGED, AND DECREED that:

A. The Complainant, Maxine Boomgarden, is entitled to a judgment against Respondents Hardin County Veterans Commission Board and Hardin County Board of Supervisors in the amount of fourteen thousand seven hundred eighteen dollars and zero cents (\$14,718.00) in attorney's fees and nine hundred ninety-one dollars and twenty-six cents (\$991.26) in costs for the period ending September 24, 1993.

Signed this the 23rd day of December, 1993.

DONALD W. BOHLKEN
Administrative Law Judge
Iowa Civil Rights Commission
211 E. Maple
Des Moines, Iowa 50319
515-281-4480

SUPPLEMENTAL FINAL DECISION AND ORDER ON THE AWARD OF ATTORNEY'S FEES

1. On this date, the Iowa Civil Rights Commission, at its regular meeting, adopted the Administrative Law Judge's supplemental proposed decision and order on the award of attorney's fees which is hereby incorporated in its entirety as if fully set forth herein.

IT IS SO ORDERED.
Signed this the 28th day of January, 1994.

Sally O'Donnell
Chairperson
Iowa Civil Rights Commission
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